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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,138	09/26/2000	F. Martin Pollock	006593-01868	4374

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EXAMINER

LU, JIPING

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 05/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



# Office Action Summary

Application No.

09/669,138

Applicant(s)

POLLOCK ET AL.

Examiner

Jiping Lu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-16 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.



## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed "brackets depending from the sidewall of the tank" in claim 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Mayer et al. (U. S. Pat. 3,889,641).

Mayer et al. show a fluid heating tank comprising an inlet 19-20, an outlet 3 and a baffle assembly 11a-30. Said baffle assembly comprises an inner cap positioned over the inlet 19-20 including a cover 11a having openings (not numbered, connected to inlet 19,20) therein and an outer cap positioned over the inner cap including a cover 21 and having a flange 29 depending from said cover. The outer cap is spaced apart from the inner cap and supported by a support post 22.



*Claim Rejections - 35 USC § 103*

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-6, 8, 10, 12-13, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (U. S. Pat. 3,889,641).

Mayer et al. show a fluid heating tank comprising an inlet 19-20, an outlet 3 and a baffle assembly 11a-30. Said baffle assembly comprises an inner cap positioned over the inlet 19-20 including a cover 11a having openings (not numbered, connected to inlet 19,20) therein and an outer cap positioned over the inner cap including a cover 21 and having a flange 29 depending from said cover. The outer cap is spaced apart from the inner cap and supported by a support post 22. With regard to the claimed position of "laying on its side", to position the water tank on its side is merely deemed to be an obvious matter of location which produces no patentable merit in absence of any new or unexpected results. Therefore, it would have been obvious to one skill in the art to position the water tank of Lyman on its side in order to obtain the desired results.

With regard to the shape of openings and the caps, it would have been an obvious matter of design choice to design the openings and the caps with any desired shape in order to obtain the optimum result, since applicants have not disclosed that the trapezoidal and square shape solve any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill.

6. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyman et al. (U. S. Pat. 3,807,365).



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Lyman et al. show a fluid heating tank comprising an inlet 35, an outlet 45, and a baffle assembly 26-29. Said baffle assembly 26-29 comprises an outer cap 29 positioned over said inlet 35 and a water diverting flange 26-27. With regard to the claimed position of "laying on its side", to position the water tank on its side is merely deemed to be an obvious matter of location which produces no patentable merit in absence of any new or unexpected results. Therefore, it would have been obvious to one skill in the art to position the water tank of Lyman on its side in order to obtain the desired results.

7. Claims 1-8, 10-16 are rejected under 35 U.S.C. 103 as being unpatentable over Mayer et al. (U. S. Pat. 3,889,641) or Lyman et al. (U. S. Pat. 3,807,365) in view of Clarke (U.S. Pat. 6,199,515).

Mayer et al. or Lyman et al. show a fluid heating tank comprising an inlet, an outlet, and a baffle assembly. Said baffle assembly comprises an outer cap positioned over said inlet. Clarke shows a fluid heating tank comprising an inlet with inlet pipe 2, an outlet (not show) and a baffle assembly 1. Said baffle assembly 1 comprises an inner cap positioned over the inlet 2 including a cover 4 having openings 15 therein and an outer cap positioned over the inner cap including a cover 5 and having a flange (not numbered, see Figs.3-5) depending from said cover. The outer cap is spaced apart from the inner cap and supported by a support post (at 16). Therefore, it would have been obvious to substitute the inner and outer cap baffle structure of Clarke for the baffle structure of Mayer et al. or Lyman et al in order to provide a simpler and cheaper baffle structure. With regard to the claimed position of "laying on its side", to position the water tank on its side is merely deemed to be an obvious matter of location which produces no patentable merit in absence of any new or unexpected results. Therefore, it would have been



obvious to one skill in the art to position the water tank of Lyman on its side in order to obtain the desired results. With regard to the shape of openings and the caps, it would have been an obvious matter of design choice to design the openings and the caps with any desired shape in order to obtain the optimum result, since applicants have not disclosed that the trapezoidal and square shape solve any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill.

*Allowable Subject Matter*

8. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

9. Applicant's arguments filed 2/19/02 have been fully considered but they are not persuasive. The broad claims presented simply fail to structurally define over the prior art references. There is no structural difference between the claimed "opening", "flange" and the "opening", "flange" of Mayer et al. or Lyman et al..

*Conclusion*

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).




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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jiping Lu whose telephone number is 703-308-2354. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703 308-1935. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308-7764 for regular communications and 703 308-7764 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

  
Jiping Lu  
Primary Examiner  
Art Unit 3749

J. L.  
May 19, 2002